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Abstract Title: "Going Bare" – How Some Physicians are Using Federal Bankruptcy Law to Skirt State Medical Malpractice Insurance Mandates Designed to Protect the Public's Health.

Abstract: "Going Bare" refers to the phenomenon of physicians, particularly in high-risk specialties, practicing medicine without medical malpractice liability insurance coverage and serves as an umbrella term for a grassroots physician anti-insurance movement that developed in response to medical malpractice insurance market trends that first arose in Florida in the mid-1980's. States, through their plenary police powers, are charged with protecting the health, safety, and welfare of their people. One method that all fifty states exercise their public health powers is through the licensing of medical professionals. In response to the increasingly prevalent phenomenon of "bare physicians," thirteen states have chosen to require physicians to procure medical malpractice insurance through their physician licensing statutes. Malpractice insurance requirements ensure that patients who suffer injuries through physician negligence can be compensated for their injuries and provide incentives for insurance companies to monitor the quality of their subscribing physicians. But even in states with malpractice requirements, and especially in Florida, physicians are going bare and injured plaintiffs are going uncompensated. An examination of porous physician licensing statutes and applicable case law demonstrates that physicians are using federal bankruptcy law to bypass these statutes. Future policy makers need to draft state physician licensing statutes with the 11 USC § 523(a)(4) "fiduciary fraud" exceptions to the bankruptcy code in mind if they are concerned about protecting the public's health. In bankruptcy law, a fiduciary relationship rises above the general level of fiduciary trust that exists in the normal relationship between a physician and patient. "Fiduciary fraud" is a term of art in bankruptcy law that requires that one party must hold money or property in an "express" or "technical" trust that exists before the act of medical malpractice if the debt is to be nondischargeable. Therefore, a state medical malpractice mandate must be drafted to create a special fiduciary relationship between a physician and her patients.